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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

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9 AIRPLANE MANUFACTURING  
PILOTS ASSOCIATION,

10 Plaintiff,

11 v.

12 THE BOEING COMPANY,

13 Defendant.

Case No. C09-0772 MJP

ORDER ON MOTION FOR A  
TEMPORARY RESTRAINING ORDER

14  
15 This matter comes before the Court on Plaintiff's application for a temporary  
16 restraining order and memorandum in support thereof. (Dkt. Nos. 5, 6 (as amended 22).)  
17 The Court has considered the memorandum, the response (Dkt. No. 24), the reply (Dkt. No.  
18 32), the documents submitted in support of the briefing, and the parties' presentations at oral  
19 argument on June 18, 2009. For the reasons set forth below, the Court DENIES Plaintiff's  
20 motion.

21 **Background**

22 Plaintiff American Manufacturing Pilots Association ("AMPA") represents ten  
23 instructor pilots employed by Boeing who have received notices they will lose their jobs on  
24 July 24, 2009. (Dkt. No. 6 at 4-5.) Defendant Boeing operates Boeing Commercial Airplanes  
25 ("BCA") and employs 50 instructor pilots represented by the AMPA at its Longacres site in  
Renton, Washington. (Wright Decl. ¶ 2.) On March 19, 2009, the two parties entered into a

1 collective bargaining agreement (“CBA”) that, among other provisions, includes a grievance  
2 and arbitration procedure. (Canova Decl., Ex. A.)

3 Two Articles of the CBA are relevant for the purposes of this motion: First, Article 3  
4 states that Boeing may hire non-AMPA “simulator-only” instructors, but “no Instructor Pilot  
5 ... shall be laid off as a result thereof.” (Id., Art. III, § 4.) Second, Article 7 differentiates  
6 between grievances filed by employees and grievances filed by the union itself. (Id., Art. VII,  
7 §§ 2-3.) Employees may file grievances “within ten (10) workdays after the date of” any  
8 layoff. (Id. § 2.) The section related to union grievances refers to “the event giving rise to the  
9 grievance” without reference to a layoff as a predicate for a grievance. (Id. § 3)

10 On May 11, 2009, AMPA learned of Boeing’s intention to lay off ten union members  
11 and on May 22, 2009, those pilots received WARN notices informing them they would lose  
12 their jobs on July 24, 2009. (Canova Decl. ¶ 7.) AMPA claims these terminations will take  
13 place even though “simulator only instructors will continue to be hired by and employed by  
14 Boeing.” (Id. ¶ 9.) On May 18, Plaintiff’s counsel sent a grievance letter to Labor and  
15 Employment section of Boeing’s Office of the General Counsel claiming “the proximate  
16 cause of these layoffs is the continued employment by Boeing . . . of simulator-only  
17 instructors at Longacres” and requesting the matter be referred to an arbiter under the CBA.  
18 (Iglitzen Decl., Ex. 1.) On May 28, Boeing responded indicating its belief that “[b]ecause no  
19 layoffs of AMPA-represented employees have occurred, there has been no event that would  
20 precipitate a grievance.” (Id., Ex. 2 (further noting employees could file a grievance upon  
21 termination).) On June 2, AMPA requested an “expedited arbitration process and, on June 3,  
22 Boeing repeated its belief that the grievance was premature. (Id., Ex. 3, 4.) Plaintiffs filed  
23 their complaint in this matter on June 3, 2009 pursuant to Section 301 of the Labor  
24 Management Relations Act, 29 U.S.C. § 185. (Compl. ¶ 1.3.) On June 8, Plaintiff filed the  
25 present motion.

## Discussion

### I. Jurisdiction and Legal Standard

The Norris-LaGuardia Act, 29 U.S.C. §§ 101, *et seq.*, generally limits a district court's power to issue injunctions in disputes between a union and an employer. In Boys Markets, Inc. v. Retail Clerks Union, Local 770, the Supreme Court recognized an exception to the Act's anti-injunction provisions and allowed equitable relief to prevent a union from going on strike over a dispute that was subject to a binding arbitration process. 398 U.S. 235, 253 (1970) (injunctive relief can support the central purpose of the Norris-LaGuardia Act when it "merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration"); *see also* Buffalo Forge Co. v. United Steelworkers of America, 428 U.S. 397, 407 (1976) ("The driving force behind Boys Markets was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties."). Courts have also found injunctive relief to be appropriate in so-called "reverse Boys Markets" instances where "an employer makes changes in areas which are subject to the grievance-arbitration procedure, and the union seeks to enjoin the employer from making the changes until the grievance is resolved through arbitration." Newspaper & Periodical Drivers' & Helpers' Union, Local 921 v. San Francisco Newspaper Agency, 89 F.3d 629, 632 (9th Cir. 1996).

Under the reverse Boys Markets exception, courts have found injunctive relief available where:

(1) the collective bargaining agreement contains a mandatory arbitration provision; (2) the underlying dispute is arbitrable; (3) the party seeking arbitration is prepared to arbitrate; and (4) issuance of an injunction would be warranted under ordinary principles of equity-whether breaches are occurring and will continue, or have been threatened and will be committed; whether the breaches have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

Id. at 632.

1 II. Scope of the Court's Injunctive Powers

2 Boeing objects to AMPA's proposed injunction because the requested remedy is not  
3 articulated in the contract. (Dkt. No. 24 at 10-11.) In general, the Court's injunctive power  
4 exists for "for the purpose of enforcing collective-bargaining agreements." Buffalo Forge,  
5 428 U.S. at 409 (citations omitted); see also Otis Elevator Co. v. Int'l Union of Elevator  
6 Constructors, 408 F.3d 1, 9 (1st Cir. 2005) (district court "exceeded its discretion by requiring  
7 the parties to submit to an arbitration regime different from what was contractually bargained  
8 for ... in doing so, [the court] contravened the policies promoted by Boys Markets ...").

9 In its second demand letter to Boeing and in its present motion, AMPA requests an  
10 "expedited arbitration process to be conducted pursuant to the expedited arbitration rules of  
11 the American Arbitration Association" such that a decision could be reached before the  
12 scheduled terminations. (Iglitzen Decl., Ex. 3; see also Dkt. No. 6 at 22.) The contract,  
13 however, is silent on the issue of expedited arbitration. (See Canova Decl., Ex. A.) The only  
14 time-sensitive provision in the CBA's agreed upon rules of procedure state that an arbiter  
15 must render a decision within sixty days of the close of any hearing. (Id.) AMPA argues that  
16 there is nothing about the requested injunction "that is inconsistent with any of [the]  
17 contractual provisions." (Dkt. No. 32 at 5.) Inconsistency is not the only bar to injunctive  
18 relief under Boys Markets. In the Court's view, the requested injunction would be  
19 inappropriate because it would impose an arbitration procedure fundamentally different from  
20 the agreed upon provisions of the CBA. See Otis Elevator, 408 F.3d at 9.

21 III. Irreparable Harm

22 Even if the Court could grant AMPA's requested injunction under a reverse Boys  
23 Markets scenario, it would be inappropriate to do so because AMPA has not demonstrated  
24 that they will suffer irreparable harm in the absence of expedited arbitration. In the context of  
25 a labor dispute like this, an irreparable injury is "not simply an injury resulting from a breach  
of contract that would not be fully redressed by an arbitral award, but rather injury so

1 irreparable that a decision of the (arbitration) board in the union’s favor would be but an  
2 empty victory.” American Postal Worker’s Union v. U.S. Postal Service, 372 F. Supp. 2d 83,  
3 91 (D.D.C. 2005) (internal quotations omitted) (quoting Int’l Ass’n of Machinists &  
4 Aerospace Workers v. Panoramic Corp., 668 F.2d 276, 285-86 (7th Cir. 1981)). The Ninth  
5 Circuit has cited approvingly the Second Circuit’s conclusion that “[t]he arbitration process is  
6 rendered meaningless only if any arbitral award in favor of the union would substantially fail  
7 to undo the harm occasioned by the lack of a status quo injunction.” Local 921, 89 F.3d at  
8 634 (quoting Niagara Hooker Employees Union v. Occidental Chemical Corp., 935 F.2d  
9 1370, 1378 (2d Cir. 1991)) (further noting the standard “guards against undue judicial  
10 interference with the employer’s ability to make business decisions”); see also American  
11 Postal Workers Union, 372 F. Supp. 2d at 91 (irreparable harm existed where union’s sought-  
12 after remedy would not be available after a certain date).

13         The Supreme Court has stated “an insufficiency of savings or difficulties in  
14 immediately obtaining other employment—external factors common to most discharged  
15 employees and not attributable to any unusual actions relating to the discharge itself—will not  
16 support a finding of irreparable injury.” Sampson v. Murray, 415 U.S. 61, 92 n.68 (1974).  
17 Plaintiff claims its members will suffer irreparable harm because (1) pilots may have to  
18 relocate overseas or reenlist in the military to find alternative employment, (Dkt. No. 6 at 15  
19 (citing Reed Decl., Denton Decl., Brown Decl.)); (2) there are direct and collateral effects of a  
20 primary breadwinner losing employment, (Id. at 16-17 (citing Wendt Decl., Sullivan Decl.));  
21 (3) pilots will be unable to afford private school for their children, (Id. at 17-18 (citing  
22 Chapman Decl., Westcott Decl.)); and (4) pilots will be deprived of their chosen career path,  
23 (Id. at 18 (citing Coleman Decl.)).

24         While the Court recognizes that these are serious consequences, they are the types of  
25 injuries that backpay and reinstatement are designed to remedy. AMPA’s injuries are not in  
any way unique to the manner of the discharge itself. See Sampson, 415 U.S. at 92 n.68. In

1 addition, none of AMPA's arguments indicate that the arbitration process will be undermined  
2 by the union members' termination. Unlike the scenario in American Postal Workers Union,  
3 where the sought-after remedy would not be available after a certain date, the union members  
4 here do not argue Boeing will be unable to reinstate or reimburse the pilots should they  
5 prevail at arbitration. 372 F. Supp. 2d at 91. Neither party suggests that Boeing will  
6 fundamentally restructure BCA such that an AMPA victory at arbitration would produce an  
7 "empty victory." The Court finds that AMPA will not suffer the type of harm that would  
8 eviscerate the arbitration process and render any award meaningless.

### 9 **Conclusion**

10 While the Court recognizes the difficulties present in any situation involving layoffs,  
11 AMPA has not demonstrated that the requested injunctive relief is appropriate. First, the  
12 relief requested is unavailable under Boys Markets or its progeny because it proposes a form  
13 of arbitration that the parties have not agreed upon. Second, AMPA has not demonstrated the  
14 type of irreparable injury that could not be remedied by a favorable arbitration award. The  
15 Court therefore DENIES Plaintiff's application for a temporary restraining order compelling  
16 expedited arbitration.

17 The Clerk is directed to send a copy of this order to all counsel of record.

18 DATED this 22nd day of June, 2009.

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21 Marsha J. Pechman  
22 United States District Judge  
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